

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project would not qualify for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with §1965.215 (f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

(1) A written request to prepay the FmHA or its successor agency under Public Law 103-354 loan on a specified date;

(2) Complete and documented information necessary to prepare the prepayment report as outlined in exhibit B of this subpart and to make the required determination needed to develop an incentive offer as outlined in exhibit D of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictive-use provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and

(6) Evidence that actions required by any applicable State laws related to prepayment have been met.

**§ 1965.206 Review of borrower prepayment request by Servicing Office.**

The Servicing Office will determine whether the prepayment request is in conformance with §1965.205 of this subpart. Within 15 working days of receipt

of a prepayment request, the Servicing Office will take the following actions:

(a) *Return of incomplete requests.* If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.

(b) *Receipt of complete requests.* If a complete prepayment request is submitted, the Servicing Official will:

(1) *Acknowledge the request.* Send an acknowledgment letter to the borrower specifying the date of receipt of the complete request and informing the borrower that prepayment commitments should not be finalized until FmHA or its successor agency under Public Law 103-354 issues a letter of approval.

(2) *Notify current tenants.* Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or denied before notifying tenants. FmHA or its successor agency under Public Law 103-354 Guide Letter 1965-E-2 (available in any FmHA or its successor agency under Public Law 103-354 office) may be used as a guide. The following issues are to be addressed in the letter:

(i) The borrower proposes to prepay the FmHA or its successor agency under Public Law 103-354 loan and remove the housing from the FmHA or its successor agency under Public Law 103-354 program if all prepayment requirements imposed by FmHA or its successor agency under Public Law 103-354 are met;

(ii) FmHA or its successor agency under Public Law 103-354's preliminary determination that the borrower's request to prepay will/will not be approved;

(iii) The likely effect of the prepayment on tenants living at the project. Include:

(A) The level at which rents at the project are projected to be set if prepayment is accepted;

(B) Restrictive-use provisions the borrower has agreed to maintain and the terms of the restrictions;

(C) Whether Section 8 or State or local subsidy will remain with the project; and

(D) Whether the borrower has the option to terminate section 8 assistance at the next renewal period (opt-out), and if so, when.

(iv) FmHA or its successor agency under Public Law 103-354 must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding to accept the prepayment;

(v) Conditions under which prepayment will be accepted;

(vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by FmHA or its successor agency under Public Law 103-354 to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(xi) Any other information relevant to the case.

(3) *Notify National Office.* The Servicing Office is to notify the FmHA or its successor agency under Public Law 103-354 State Office, who will notify the Assistant Administrator, Housing, FmHA or its successor agency under Public Law 103-354 National Office, in writing using the format of FmHA or its successor agency under Public Law 103-354 Guide Letter 1965-E-1 (available in any FmHA or its successor agency

under Public Law 103-354 office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) *Notify other agencies.* The FmHA or its successor agency under Public Law 103-354 State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the FmHA or its successor agency under Public Law 103-354 loan. The agencies contacted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with §1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the FmHA or its successor agency under Public Law 103-354 State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) *New tenant notification.* (i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

"The mortgage on this project may be repaid to the Federal Government on or after (date). (At that time/ (date restrictive-use provisions expire)/ (other relevant date), your rent may be raised to \_\_\_\_/ and/or you may be asked to move from this project."

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office

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will also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

### **§ 1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.**

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in subpart E of part 1944 of this chapter.

### **§ 1965.208 Restrictive-use provisions related to LH projects with grants.**

For LH projects with *any* size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

### **§ 1965.209 Restrictive-use provisions after prepayment.**

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

- (1) A servicing action;
- (2) Acceptance of prepayment incentives; or

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(3) Restrictions accepted as a condition of prepayment as specified in this subpart and exhibits A-1 through A-4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215 (e)(6) of this subpart.

### **§ 1965.210 Loans approved prior to December 15, 1989—RHS actions when processing prepayment requests.**

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart (available in any Rural Development State or District Office) will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired.

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